REMARKS

Claims 1-6 are pending. Applicants elected with traverse Group I (claims 1-4 and 6) and SEQ ID NO: 1 (see also SEQ ID NO: 2, which is the amino acid sequence that is encoded by SEQ ID NO: 1, as recited in new claim 6) for examination on the merits. With regard to the Examiner's further requirement, Applicant elect with traverse Group 1 (claims 1-4 and 6). Applicants reserve the right to prosecute nonelected subject matter in a further patent application.

The Examiner's citation of Kitagawa et al. (J. Biol. Chem. 276:38721-38726, 2001) does not establish that unity of invention is lacking because its sequence is not the same as SEQ ID NO:1 encoding a chondroitin synthase of the present invention. The sequence that is taught by Applicants is a special technical feature shared in common by the claims, all of which should be examined in this application, and the restriction requirement of February 8, 2007 should be withdrawn.

Notwithstanding the above election, reconsideration of the restriction requirement of October 19, 2006 is requested because examination of the six nucleotide sequences recited in claim 4 would not constitute a serious burden. Thus, the sequences depicted in any one of SEQ ID NO: 3, SEQ ID NO: 5, SEQ ID NO: 65, SEQ ID NO: 67 or SEQ ID NO: 69 should not be withdrawn from consideration. At least SEQ ID NO: 3 should be examined in this application. SEQ ID NOS: 1 and 3 are structurally similar (i.e., they both depict nucleotide sequences) and they have similar functions because the proteins they encode (the amino acid sequences are depicted in SEQ ID NOS: 2 and 4, respectively) are also related.

The different sequences identified by the Examiner are patentably distinct, but it would not constitute a serious burden for all sequences to be examined in this application because M.P.E.P. § 803.4 refers to the sua sponte waiver of 37 CFR 1.141 et seq. by the Director and his decision to permit a reasonable number of sequences to be examined in a single application ("It has been determined that normally ten independent and distinct nucleotide sequences will be examined in a single application without restriction," emphasis added). This decision contradicts and controls ("[The M.P.E.P.] contains instructions to examiners . . . and outlines the current procedures which the

examiners are required or authorized to follow in appropriate cases in the normal examination of a patent application") over the Examiner's requirement. Therefore, Applicants submit that all sequences should be examined in this application in accordance with the Director's decision and his controlling authority to require examination of more than one sequence in a single application.

In the alternative, it is noted that claims 1-3 are generic or linking claims and that examination should proceed under the provisions of M.P.E.P. § 809. The nucleotide sequences recited in claim 4 and the amino acid sequences recited in claim 6 are related as species of the chondroitin synthase genes and proteins, respectively, in claims 1-3. Therefore, allowance of a generic or linking claim should result in examination of all sequences recited in the claims even though they are individually patentably distinct.

Applicants earnestly solicit an early and favorable examination on the merits. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

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